THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 6 NOVEMBER - DECEMBER, 1955 Number 2

Lawyers' Education

The pursuit of the legal profession involves a happy combination of the intellectual with the practical life. The intellectual tends to breadth of view; the practical to that realization of limitations which are essential to the wise conduct of life. Formerly the lawyer secured breadth of view largely through wide professional experience. Being a general practitioner, he was brought into contact with all phases of contemporary life. His education was not legal only, because his diversified clientage brought him, by the mere practice of his profession, an economic and social education. The relative smallness of the communities tended to make his practice diversified not only in the character of matters dealt with, but also in the character or standing of his clients. For the same lawyer was apt to serve at one time or another both rich and poor, both employer and employee. Furthermore, nearly every lawyer of ability took some part in political life. Our greatest judges, Marshall, Kent, Story, Shaw, had secured this training. . . .

The last fifty years have brought a great change in professional life. Industrial development and the consequent growth of cities have led to a high degree of specialization—specialization not only in the nature and class of questions dealt with, but also specialization in the character of clientage. The term "corporation lawyer" is significant in this connection. The growing intensity of professional life tended also to discourage participation in public affairs, and thus the broadening of view which comes from political life was lost. . . .

. . . The judge came to the bench unequipped with the necessary knowledge of economic and social science, and his judgement suffered likewise through lack of equipment in the lawyers who presented the cases to him. For a judge rarely performs his functions adequately unless the case before him is adequately presented. Thus were the blind led by the blind. It is not surprising that under such conditions the laws as administered failed to meet contemporary economic and social demands. . . .

From **The Words of Justice Brandeis**
Edited by Solomon Goldman and with a Foreword by Justice William O. Douglas

THE DECALOGUE JOURNAL

Published Bi-Monthly by

THE DECALOGUE SOCIETY OF LAWYERS

Except July and August

180 W. Washington St. Chicago 2, Illinois

Telephone ANdover 3-6493

Volume 6 NOVEMBER - DECEMBER, 1955 Number 2

IN THIS ISSUE

Lawyers' Education.....Frontispiece
From the Words of Justice Brandeis

Society to Fete Judiciary on December 21st.. 2

1956 Decalogue Diary Now Available..... 2

John Marshall, Molder of U. S. Constitution. 3
Elmer Gertz

For Revision of U. S. Immigration Laws.... 6

Socratic Treatment for the Declaration of Independence..... 6

Civil Rights of Conscience..... 7
Zeamore A. Ader

Community Honors Judge Henry L. Burman.11

Decalogue Research Project.....11

Notes on the Refugee Relief Act of 1953....12
William Greenhouse

Applications for Membership.....14

Book Reviews.....15
David Silverzweig; Louis Sherman; Leonard Leon

Lawyer's Library.....17

A Life Sentence—*A Poem*.....18
Henry Coolidge Semple

The Editor Recommends.....18

Cartoon.....Back page
Courtesy, *Case* and *Comment*

SOCIETY TO FETE JUDICIARY

A Toast to the Bench, a most popular feature of our Society's social activities is scheduled to take place on December 21 at 4:00 P.M. in the Grand Ballroom of the Covenant Club. Initiated but two years ago to emphasize our association's esteem for all the courts in the Chicago area, the event has drawn ever larger attendance of members and their friends. The judges of the Federal, State and City courts will be honored guests of our Society. Admission to the affair is $2.75 per person.

First Vice-president Morton Schaeffer, in charge of the arrangements, urges all members to make early reservations.

1956 DECALOGUE APPOINTMENT BOOK AND DIARY NOW AVAILABLE

The Decalogue Appointment book and Diary, long an indispensable aid servicing a lawyer's office, will be available again this year between the 15th and 20th of December, for free distribution to members of our Society only. The book may be obtained in the headquarters of our Society at 180 West Washington Street between 10:00 A.M. and 5:00 P.M.

Throughout the many years of its uninterrupted publication, the Diary has been constantly expanded in size and enriched by added features, the purposes of which were to make its contents increasingly useful to the lawyer. Its pages mark daily and hourly appointments and court calls. There is a Hebrew calendar. A full membership directory. Useful general information of importance in a law office. A detailed list of the Society's institutions and a recital of the manifold activities of our society that have helped perpetuate our organization and enhance its growth.

And . . . Oscar M. Nudelman, chairman of our Diary and Directory, insists that there is a standing invitation to all members to contribute suggestions and advice for an even better, improved, Appointment Book and Diary.

ALUMNI PRESIDENT

Member Jeanne Elizabeth Brown, who was recently elected President of THE JOHN MARSHALL LAW SCHOOL ALUMNI ASSOCIATION, is the first woman to head the Alumni Association in the 56-year history of the school from which more than 3,400 students have graduated in 77 classes.

John Marshall, Molder of the U. S. Constitution

By ELMER GERTZ

Historians generally say that the American Union as we know it today grew out of the uncompromising struggle in the first years of the republic between Thomas Jefferson and Alexander Hamilton, and the conflicting social philosophies in which they believed so ardently. Jefferson, out of a passion for popular freedom, distrusted strong central government. He wanted a strict construction of the Constitution. Hamilton, out of a cold contempt for the masses and a worship of efficient strength, favored a powerful national government. He wanted the Constitution to be so interpreted as to make the Chief Executive strong and the people impotent.

Historians agree that a synthesis between the opposing theories was achieved, and most of them rejoice over it. This marriage of opposites was solemnized by John Marshall. It is to him that we largely owe those things in the American system which we honor. Until his appointment as Chief Justice of the United States in 1801, the Supreme Court was an empty vessel, disregarded by all. In his long stewardship of the Court, he made it an instrument of government co-equal to the executive and legislative branches. He gave dignity and influence to the highest court of the land and the judiciary itself. Never afterwards was there a permanent diminution of the power of the courts. More than that, he gave the breath of life to the Constitution itself. He gave it the substance and reality which it now possesses.

The story is of surpassing interest and importance, particularly on this 200th anniversary of Marshall's birth.

* * *

Two years after Marshall's appointment, he wrote the Supreme Court's opinion in the pivotal case of *Marbury vs. Madison*. There, for the first time, the doctrine was proclaimed that the Supreme Court and all courts have the right, power and duty to declare an act of Congress null and void when it violates the Constitution of the United States. This doctrine is no where mentioned or even hinted at in the Constitution itself. Marshall cited no cases, or precedents, in support of the doctrine. He refused to argue from ancient laws or modern instances. He brushed aside all technicalities and pseudo-learning, and hearkened to fundamentals. The Constitution, he said, is the supreme law of the land; all national authority stems from it; it defines and delimits the respective rights and privileges of the Congress, the States, and the people. Were it to be ignored, it would cease to have any substance, and, in the end, the Congress alone would rule. So it is the duty of judges to see that all laws comply with the Constitution. "A law repugnant to the Constitution is void," he concluded, "and the courts as well as other departments are bound by that instrument." From thenceforth the practice of the courts everywhere in passing upon the constitutionality of all laws has remained inviolate.

Marshall did not stop with declaring an act of Congress unconstitutional. He likewise set aside important acts of the state legislatures whenever they violated the federal Constitution. In the leading case of *Fletcher vs. Peck*, in 1810, he cast out an act of the Georgia legislature. He there discarded the notion that any state is absolutely sovereign. Each, he said, is "part of a large empire," a member of a Constitutional union "which imposes limits to the legislature of the several states."

While Marshall set up the Constitution as the norm for all legislative and executive acts, he discarded as unreal, impracticable and dangerous the idea that the letter, and the letter alone, of the Constitution was to govern. He did not believe in a narrow, strict and unimaginative construction, or interpretation, of the Constitution. In *McCulloch vs. Maryland*, the famous case involving the United States Bank, he enunciated the doctrine that the Congress has a wide range of "implied powers" as well as expressly granted powers. These, he said, grew out of the Constitutional provision giving the legislative branch of the government the right to enact laws that were "necessary and proper" in carrying out the express grants. He declared that

with respect to the means by which the powers that the Constitution confers are to be carried into execution, the Congress must be allowed sufficient discretion to enable it "to perform the high duties assigned to it, in the manner most beneficial to the people."

So one might catalogue the Marshall decisions: the Dartmouth College case, *Cohens vs. Virginia, United States vs. Aaron Burr, Sturgis vs. Crowinshield,* and many others, spread over thirty-five kaleidoscopic years of history. Each caused a violent controversy. Each was damned with resounding oaths by good and true men, among them Thomas Jefferson, one of the profound thinkers and real democrats of history, and Andrew Jackson, the thunder and lightning of the great masses. Yet Marshall inevitably prevailed. It was not because he wielded greater power than Presidents and Congresses, or that he had more intellect or discernment or character than any man of his time. It was simply that his was the pen through which history wrote. Somehow he sensed the currents of the future and rode and wrote with their tides. It was America's destiny to become a great nation, one and indivisible, and capable of performing all tasks that befell it; and Marshall established the rules of the legal game which made this possible. He was apparently the first one to use the very phrase, "the American nation." Had he not been at the helm of the Supreme Court, others might have fumbled and faltered. In the end, the genius of America might have prevailed; but only after the costly expenditure of time and fortune and even life. Marshall speeded up the process of creating the America that we know.

What manner of man was this father of the American judicial system? What sort of life did he live?

John Marshall was born at Germantown (later known as Midland), Virginia, on September 24, 1755, the eldest son of Col. Thomas Marshall and Mary Keith. His mother was a member of the Randolph family, from which sprang some of the most distinguished sons of the Old Dominion. His father was a well-known officer in the French and Indian War and later in the War of Independence. But Col. Marshall had a love of literature and history that was at least equal to his delight in a military life. He was one of the first subscribers to Blackstone's *Commentaries* when it was published in America in 1772. He was his son's first teacher, and a good one.

Young John Marshall had little formal schooling. For two years he had a Scottish tutor and for one year he attended an academy at which James Monroe, a future President of the United States, was likewise a pupil; then he attended a few lectures on law and natural philosophy at William and Mary College. For the rest, he was self taught; and in that fashion he learned the law of the land.

Whatever bookishness he possessed was tempered by a fondness for outdoor activities. He was a good runner; he had a frog's capacity for leaping; and he had agility at the old game of quoit throwing. He took long tramps in the woods and developed inordinate strength and will-power. These he put to good use very early in life.

Before his majority, he abandoned his studies and entered George Washington's Revolutionary army, a member of his father's regiment. His powers of persuasion were devoted to winning other young men to the Continental cause. He drilled a group of volunteers. But he yearned for action, and got it soon enough, and often, in his native colony and in New Jersey, Pennsylvania and New York. He showed courage, good cheer, patience, real qualities of leadership. Very soon the valorous young man was captain of a company.

Marshall early sensed that he was being given priceless experience and the perquisites of power and understanding. He said that he entered Washington's army a Virginian and left it an American. The difficulties of the times convinced him that only in unity would the colonies win real strength. He had little patience with the philosophy of weakness.

Taking advantage of a lull in the military activity, he reentered William and Mary College and took a lecture course in law. In 1781, when twenty-six years old, he was granted a license to practice. Curiously enough, Jefferson, then Governor of Virginia, signed his license. Almost at once he mixed with his legal business a career in government. He was elected to the Virginia assembly and in that company of distinguished legislators he was made a member of the executive council. In all, he served eight terms in the assembly. Even when he moved

from his home county to Richmond, he was re-elected. The people respected this believer in a virile government.

In 1788 the question of the ratification of the Federal Constitution was presented to a convention of which he was a member. Many men feared that the proposed central power would exercise tyrannous restraints and serve to nullify those rights which had been won with blood and suffering on the Revolutionary battlefields. The debate was fierce; for the delegates sensed that in their hands was placed the power to wave "Yea" or "Nay" to a new way of life. Marshall argued for the Constitution with fervor and effectiveness. He was probably the one most responsible for ratification. Had Virginia demurred, it is unlikely that the United States of America would have been born at that time. Out of the chaos might have come more civil strife, a weakening of authority, perhaps conquest by a foreign power.

Marshall now decided to augment his private fortunes. He left public office and engaged solely in the practice of law. His clientele grew. But once more he yielded to his instinct for government and returned to the legislature. Again he raised his voice in support of a broad construction of the Federal Constitution. The extremely unpopular Jay Treaty with England was before the session, its crux the right of the executive to negotiate a commercial agreement with a foreign nation. Marshall stoutly maintained that the right existed, and he carried the legislature with him. Whenever the occasion arose, he defended the concept of a strong central authority—not that he loved free Virginia less, but that he loved powerful America more.

So his reputation rose in all sections of the country. The post of Attorney General was tendered to him; but he turned it down. The President wanted to appoint him Minister to France; but this, too, he refused. Yielding to executive importunity, he accepted the office of Special Envoy to France in 1797, because our relations with that country were at stake. He, Pinckney and Gerry attempted to reach an accord with Revolutionary France; but were unsuccessful, due to French intransigence. It was then, at a banquet for Marshall, that Pinckney said: "Millions for defense, but not a cent for tribute." Yet Marshall gained in stature. Washington himself urged him to become a candidate for Congress, and he was duly elected to the House in 1798.

As a representative, he was the acknowledged leader there of the Administration forces, gathered in the Federalist party. With Alexander Hamilton, he was the philosopher and theorist of a great political school. He then had in Thomas Jefferson his most forceful opponent. Later a rougher and readier Democrat, Andrew Jackson, was to be Marshall's bitterest foe. Marshall thrived on opposition. He rose to his full stature in debate, particularly on constitutional issues. Of such he had a sufficiency during his term in Congress.

At the turn of the century, President Adams appointed him Secretary of State, and a year later, in 1801, he was named the Chief Justice of the United States in a move by the bitterly harrassed John Adams to perpetuate the Federalist rule of the judiciary and, perhaps, to revenge himself upon Jefferson. Whether or not the motives behind the appointment were noble or ignoble, Marshall remained at the helm of the Supreme Court until his death, thirty-four years later, in 1835. His record as Chief Justice remains one of the imperishable adornments of American history, as much, or more, the subject of study now as when he tilted lances with all the great minds and indomitable wills of his day.

To Marshall the judicial attire was not a monk's garb. He did not renounce the world. He was very much of it, and he strove at all times to influence its course, until his once vigorous health began to fail just four years before his death. Not long before that he accepted a membership in the Virginia constitutional convention and there battled against radical changes in the state's basic law. His even-tempered leadership prevented the impairment of the state's judiciary. He felt that if Virginia's courts were free, the judiciary of the United States had greater survival qualities. There was no mandate to silence so far as he was concerned. He wrote and published numerous volumes, without regard for his position, among them a Life of Washington.

Even Marshall's opponents paid tribute to him. Superficially his bodily frame was ungainly; he was tall and loose jointed. But withal

(Continued on page 18)

For Revision of U. S. Immigration Laws

Following the passage of the McCarran-Walter Act (The Immigration and Nationality Act of 1952), over President Truman's veto, the Civic Affairs Committee of The Decalogue Society, Richard L. Ritman, Chairman, has maintained close scrutiny over the operation of this Act because of the unprecedented and wide-spread criticism which preceded and followed its enactment into law.

Though in the process of preparing its own analysis and memorandum regarding the now pending Lehmann-Celler bill, which is designed to replace the McCarran-Walter Act, the Civic Affairs Committee recently recommended and our Board of Managers voted in favor of having our Society add its name to the list of organizations subscribing to the following statement prepared by the COMMITTEE FOR REVISION OF U. S. IMMIGRATION LAW which is to be submitted to THE SUBCOMMITTEE ON IMMIGRATION AND NATURALIZATION OF THE UNITED STATES SENATE JUDICIARY COMMITTEE. Member Max Swiren is Chairman of the COMMITTEE FOR REVISION OF U. S. IMMIGRATION LAW.

Statement of the COMMITTEE:

Our national immigration policy should be predicated upon three fundamental principles:

First, immigration is healthy for our culture and our economy. The introduction of new threads adds strength and resiliency to our national fabric.

Second, the admission of immigrants should reflect a wholesome spirit of international good will and cooperation, consonant with our foreign policy.

Third, immigrants admitted to our country should be permitted to rebuild their lives in an atmosphere of peace and tranquility, made secure by democratic principles and processes.

To implement these principles, there is great urgency that the following basic changes be made promptly in our Immigration and Naturalization Act:

1. The national origin quota system should be abolished. Visas should be issued on the basis of the right of asylum, reunion of families, particular needs in the United States, special needs in the free world and, finally, general immigration. Within the framework of these considerations, visas should be allocated without regard to national origin, race, creed or color.

2. Related to the need abroad and our tremendous absorptive capacity at home, the permissive total of immigrants should be substantially increased from the 154,000 annual limit provided by the McCarran Act. In any event, the national maximum quota of immigration should be determined by reference to the most recent census rather than the census of 1920.

3. The denial of a visa by an American Consul should, by application of an American citizen concerned with the matter, be subject to review by a board of appeals and thereafter by the courts. In every area of the Immigration Service, there should be an opportunity for fair hearing, uniformity of treatment and the normal right of administrative determinations.

4. The principle of second-class citizenship imposed upon naturalized citizens by the McCarran Act should be abolished. All citizens—naturalized and native-born alike—should have the same burdens and responsibilities and enjoy the same rights and privileges.

5. Necessary security regulations can and must be coordinated with the administration of immigration so that national immigration policies may not be frustrated. To that end, there should be eliminated excessive emphasis on security that would unduly restrict properly qualified immigrants and, further, inhibit leaders of the sciences and arts from visiting our country for the purposes of scientific and cultural pursuits.

SOCRATIC TREATMENT FOR THE DECLARATION OF INDEPENDENCE

A unique forum, one of a series sponsored by our society on the general topic of the "Bill of Rights," will be given in the Covenant Club at a luncheon on Friday, December 16. Its subject will be public discussion of one of our nation's greatest documents, the Declaration of Independence.

The meeting, under the auspices of The Decalogue Forum Committee, Solomon Jesmer, chairman, is in cooperation with the Decalogue Great Books Discussion Group, Oscar M. Nudelman and Alec E. Weinrob, leaders.

The Declaration of Independence, examined by the Socratic method, should at once emerge as a document of amazing breadth and comprehensiveness; a lesson to the entire world in liberty and freedom; an indictment against tyranny and oppression; a philosophical contribution to the ethics and morals of government.

The discussion will follow the methods of a regular "Great Books" class session. Among the participants will be: Paul G. Annes, Elmer Gertz, Alec Kollenberg, Michael Levin, Ruth Levine, Louis B. Rappaport, Carl B. Sussman, and Benjamin Weintroub. The audience will also be invited to participate. The committee in charge of arrangements urges early reservations. Come early and bring a friend.

Civil Rights of Conscience

By ZEAMORE A. ADER

Member Zeamore A. Ader is a special hearing officer, United States Department of Justice, and a former special assistant to The Attorney-General of the United States.

The right of an individual to conduct his life within a personal pattern of fidelity to God is commonly accepted as a first principle of American morality and law. Respect for and abidance by American law is commonly accepted as a first principle of American citizenship. Yet, historically and currently, these two fundamentals struggle in diametrical conflict in that important area of our national life occupied by religiously conscientious objectors to training and service in the armed forces.

Civil disobedience is not a creation of the modern mind. For spiritual cause, it is as ancient as the divine identification of man's soul. Pharaoh was the ruler of Egypt. He commanded that all Hebrew sons born be killed. Yet a daughter of Levi, the mother of Moses, bore a male child, hid him in the bulrushes, saved his life, defying the secular law.[1] Rome ruled the Holy land. Yet, Peter, the disciple of Jesus, taught, obey God rather than man.[2] Actual or potential civil disobedience was prompted by the claim of these individuals to conduct their lives within personal patterns of fidelity to God.

People fled to a new world, America, for the right to live by conscience. Into the charter and laws of twelve of the thirteen colonies there was written protection of conscience as part of religious freedom, a guaranty later made a part of our Bill of Rights. These protections are the natural growth of the historic fact that the Old Testament was the framework of American Colonial government.[2a]

The ideal of conscience was advanced in our early history by the common study of New and Old Testaments.

That the first duty of a nation is to defend its national existence is both practical and judicial. The United States Constitution expressly provides that the, "Congress shall have power. . . . To raise and support armies. . . . To provide and maintain a navy. . . ."[3] When the right of the government to draft men into the armed forces was challenged, Chief Justice White, speaking for the United States Supreme Court, said,

"As the mind cannot conceive of an army without the men to compose it, on the face of the constitution the objection that it does not give power to provide for such men would seem to be too frivolous for further notice". (Selective Draft Law Cases, 1918, 245 U. S. 366.)

What then is the adjusting quotient?

Recognizing the right of conscience to refuse to bear arms, the Congress enacted as a provision of the Universal Military Training and Service Act that nothing contained in that Statute,

"shall be construed to require any person to be subject to *combatant* training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code".[4] (Italics added)

Upon registering with the local board, the registrant is required to complete a questionnaire (Selective Service Form No. 100). If he indicates conscientious objection to military training and service, the local board supplies him with a special questionnaire for conscientious objectors (Selective Service System Form No. 150), in which he may claim exemption from combatant or noncombatant service or both, and is afforded an opportunity to set forth information concerning the nature of his belief, whether or not he accepts a duty to a Supreme Being superior to any human relation, the nature of that belief, the source from

[1] Exodus 1:15-17

[2] Acts 3, 4.

[2a] Straus, "The Origin of Republican Form of Government".

[3] Constitution of the United States, Article 1, Section 8.

[4] U. S. C. A. Tit. 50 App. Sec. (456(j) (as amended June 19, 1951, c. 144, Title I, Sec. 1 (l-q), 65 Stat. 83, and amendments to the Universal Military Training and Service Act, P. L. 118, 84 Congress, approved June 30, 1955.)

which the belief was acquired, the names of persons on whom he relies for religious guidance, under what circumstances, if any, he believes in the use of force, the activities and behavior which in his "opinion most conspicuously demonstrate the consistency and depth of his religious convictions," whether or not he has given public expression to the views which are the basis for his claim, some background information, his participation in organizations, including religious sects, the creed of such religious sects, if any, "in relation to participation in war" and names of persons who can supply "information as to the sincerity of (his) professed convictions against participation in war."

The Statute provides that a registrant whose conscientious claim to exemption from combatant service in the armed forces is sustained shall be assigned to *noncombatant* service in the armed forces as defined by the President. However if the registrant is adjudged conscientiously opposed both to combatant and noncombatant service, he shall be assigned in lieu of induction for an equal period of time to civilian work contributing to the maintenance of the national health, safety or interest in such manner as the local board may deem appropriate.

It is characteristic in the law that substantive rights do not live except when given vitality by procedure. The Statute and regulations give such vitality to civil rights of conscience by providing that,

"Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board"

that the objector be assigned to noncombatant service in the armed forces or, in lieu of induction in the armed forces, to civilian work of national importance.[5]

[5] 50 U. S. C. A. Tit. 50 App. Sec. (456(j) (as amended June 19, 1951, c. 144, Title I, Sec. 1 (l-q), 65 Stat. 83, and amendments to the Universal Military Training and Service Act, P. L. 118, 84th Congress, approved June 30, 1955.)

At a hearing before the Department of Justice, the objector is heard on at least ten days notice. He may testify, produce witnesses and be represented by counsel. The witnesses are not sworn, the rules of evidence do not apply, and the right of counsel to examine witnesses is at the discretion of the person conducting the hearing. The Hearing Officer, prior to the hearing, has been supplied with a thorough investigative report from the Federal Bureau of Investigation touching upon the character, reputation, family background, schooling, religious training and activities, employment, credit and criminal records, if any, of the objector which may reflect the character and good faith of the objections of the person involved. By the Regulations of the Department of Justice, the objector is not permitted to see the full report. Some counsel have contended that the constitutional right of confrontation of witnesses and the right to cross examination are thereby denied. The government, on the other hand, has argued that the full investigative report is not available to the Board of Appeal in making the classification, either, and that the Department of Justice opinion is advisory, not obligatory. The government has further contended that there is no constitutional right to avoid military training and service; that the claim to such exemption is entirely statutory and subject to creation, extinction and control by statute and administrative regulation. As one Court has written:

"The Constitution grants no immunity from military service because of religious conviction or activities. Immunity arises solely through Congressional grace, in pursuance of a traditional American policy of deference to conscientious objection." (*Richter V. United States*, 181*F*(2) 591).

But the Courts then proceeded in a number of cases to impose some requirements akin to those common in constitutional trials. There was by no means unanimity of judicial opinion concerning the extent to which the objector was entitled to know the names of witnesses and the content of the investigative report. Some courts ruled that the information in varying degrees must be made available to him for use at the hearing; others ruled to the contrary.[6] Finally, the United States Supreme

[6] For a consideration of the contest by conscientious objectors to know the full Federal Bureau of Investigation report, see *United States* v *Nugent*, 346 U. S. 1, where the full report was denied them, but the right to a fair resumé was assured by the Court.

Court in *United States* v *Nugent,* 346 U. S. 1, ruled that the government need not supply the objector with the full investigative report but must give him upon request a fair resumé.

Prior to the United States Supreme Court Case of *United States* v *Nugent,* 346 U. S. 1, there being no definitive authority requiring that a written resumé of the Federal Bureau of Investigation report be served on the objector, Hearing Officers followed various methods to advise objectors of adverse factors in the investigatory report. Some orally advised the objector at the time of the hearing, others did so in writing. In the belief that the objector must know in apt time the information that he would meet if he were to be on equal ground with the government, this writer made it his practice to analyze the Federal Bureau of Investigation report and to serve the objector with a list in writing of the features adverse to the registrant, at least ten days prior to the hearing. Thus the objector could be informed in time to prepare himself to reply in person, by witnesses and by documentary evidence. Following the case of *United States* v *Nugent,* 346 U. S. 1, the Department of Justice initiated the present method of supplying the Hearing Officer with a resumé of the report which he serves on the objector with the notice of hearing. (See also *Simmons* v *United States,* 348 U. S. 397). Often, under the present procedure, the objector makes demand to examine the full investigative report. But this, according to the Regulations, is refused (*United States* v *Nugent,* 346 U. S. 1). There is no rule or regulation settling the manner in which fairness both to the government and the Registrant is to be achieved. The author, seeking to minimize any information adverse to the objector which the objector is not permitted to meet by confrontation and cross examination of witnesses, asks the conscientious objector to state in what respects, if any, the resumé is allegedly erroneous, and he is then given a full opportunity to establish by his testimony, by witnesses and by documentary evidence what in his view are the true facts. This narrows the conflict at once. In the view of the author, those portions of the investigative report which are denied by the objector should serve primarily as inquiries for corroboration or denial by evidence within the objector's knowledge and with which the objector can deal directly and fully.

After conducting the hearing the Hearing Officer renders an advisory opinion which is forwarded to the Special Assistant to United States Attorney General Herbert Brownell, Jr. in charge of the conscientious objector unit, United States Department of Justice, the Hon. T. Oscar Smith. The opinion is reviewed, and a recommendation sent to the Selective Service System Board of Appeal with power to follow the recommendation or take such other action in classifying the objector as the Appeal Board may decide.

Whether or not the objector is entitled to a copy of the Department of Justice recommendation has been another storm tossed area of legal thinking on the question of fair trial. The Government contended that the recommendation was advisory and need not be served on the Registrant; also, that the objector would have the right to examine the papers in his file after the Appeal Board acted and could then ask for a rehearing on all of the information in the file. The United States Supreme Court, however, in the recent case of *Gonzales V. United States,* (1955), 348 U. S. 407, held, Justice Clark writing the majority opinion:

"It is true that the recommendation of the Department is advisory, 50 U. S. C. App. Sec. 456(j). Indeed, this very consideration led us in *United States v. Nugent* (346 U. S. 1), to allow considerable latitude in the auxiliary hearing which culminated in the Department's report. A natural corollary of this, however, is that a registrant be given an opportunity to rebut this recommendation when it comes to the Appeal Board, the agency with the ultimate responsibility for classification."

"Just as the right to a hearing means the right to a meaningful hearing, *United States v. Nugent,* supra; *Simmons v. United States,*[7] so the right to file a statement before the Appeal Board includes the right to file a meaningful statement, one based on all the facts in the file and made with awareness of the recommendations and arguments to be countered."

In the hearing conducted by the Department of Justice, which is concerned with the character and good faith of the conscientious objector, the law imposes the burden of proof on the objector. He must clearly show that he is opposed to war based on religious training and belief, more immediately, to training and service in the armed forces. The decision in the advisory opinion as to whether or not he quali-

[7] *Simmons v United States,* 348 U. S. 397.

fies as a conscientious objector concerns numerous considerations, including his acceptance or rejection of the use of force to settle disputes, his belief in a Supreme Being involving duties superior to those arising from any human relation, the religious thinking of the person, his sincerity, whether or not he is a member of a religious denomination, altho such affiliation is by no means a sine quo non, the creed of such church, if any, altho creeds are not determinative, his reputation relating to "living his religion", the objector's understanding of his avowed religious precepts, religious activities, demeanor, veracity, criminal and credit records, family training and the myriad factors that go to finding the true thinking and believing of the person. Neither belief in the use of force for defense of oneself, family, or ministry nor acceptance of theocratic warfare ipso facto disqualify for exemption from military training and service in the armed forces (*Sicurella v United States*, 348 U. S. 385).

Eventually, the Department of Justice files a recommendation with the Board of Appeal, serving a copy on the objector, who may in turn file his views in opposition to the recommendation with the Board of Appeal.

If final classification is made against the claim for exemption from military training and service or in favor of the claim for noncombatant service and the objector refuses to obey an order for induction into the armed forces, or, if the claim is sustained and an objector refuses to accept "civilian work contributing to the maintenance of the national health, safety or interest" in such manner as he shall be assigned according to law, the objector becomes subject to indictment and criminal prosecution.[8]

[8] U. S. C. A. Tit. 50 App. Sec. (456(j) (as amended June 19, 1951, c. 144, Title I, Sec. 1 (l-q), 65 Stat. 83, andamendments to the Universal Military Training and Service Act, P. L. 118, 84th Congress, approved June 30, 1955.)

The proper judicial method for challenging the legality of the classification of the objector was at one time stringently restricted (*Falbo v United States*, 320 U. S. 549). Later, the rule was changed to allow raising questions of legality of the classification in the defense of criminal prosecutions for failure to report for military or civilan service, as the situation might arise. (*Estep v United States*, 327 U. S. 114). The classification of the board is final unless there is no basis in fact, which raises the question of jurisdiction of the local board. (*Estep v. United States*, supra).

CONCLUSION

This article is not intended to be more than an introduction to a scenic view of the religio-legal territory, the distant horizons of which are not clearly visible but always changing. Probing spiritual thinking is at best an inaccurate effort, given the most accurate of scientific equipment. Probing spiritual thinking within the confines of legal concepts which seek to satisfy both the national need for self-defense and the natural need for men to live by conscience involves the play of experimental forces for preserving and developing methods of fair trial within considerations of national survival.[9]

[9] For further consideration of the right to the resumé see *United States v. Simmons*, 348 U. S. 397.

LEGAL FRATERNITY ELECTS MICHAEL ISENBERG

Member, Col. Michael M. Isenberg, formerly of the Chicago Bar, was recently elected Chancellor of the Greater Miami Chapter of Tau Epsilon Rho, an international legal fraternity.

Isenberg, a graduate of Northwestern University, practiced law in Chicago from 1930 to 1941, when he volunteered for duty in our Armed Forces. He participated in African, Italian, French and Rhineland campaigns with parachute and glider troops.

Isenberg is also an active worker in communal, professional, and civic affairs in Miami, Florida.

HABUSH ELECTED

Member Jesse J. Habush, of Milwaukee, Wisconsin, was elected to the board of governors of the National Association of Claimants Compensation Attorneys at their recent national convention at Cleveland, Ohio. He will represent the Seventh Judicial Circuit, including Wisconsin, Illinois and Indiana. Habush has headed the Wisconsin chapter of the NACCA, and has been associate editor of the NACCA Law Journal.

CONGRATULATIONS

Member Nathan Cohen was recently appointed a Master in Chancery of the Circuit Court.

Community Honors Judge Henry L. Burman

Extraordinay tribute has been paid to member Judge Henry L. Burman by the community at large. On November 12, there was a banquet in his honor at the Morrison Hotel, attended by 2,500 guests in connection with which over $2,000,000.00 in State of Israel Bonds were sold. The principal speaker at this dinner, called the most successful of its kind ever held in the United States, was Foreign Minister Moshe Sharett, who flew from Israel to participate in the honoring of Judge Burman. He made a major address on the military and economic problems confronting the Middle Eastern bastion of democracy. Other speakers were: both senators from Illinois, Paul H. Douglas and Everett Dirksen, Senator Hubert Humphrey, Senator Estes Kefauver, Mayor Richard J. Daley, former governor of Illinois Adlai E. Stevenson, member, Col. Jacob M. Arvey and others. There was presented a beautiful cantata depicting the life of Judge Burman, written by member Ben Aronin, and sung by Cantor Moses Silverman. Judge Burman responded with a moving address telling why he is so deeply concerned about the sale of Israel Bonds. His talk was the high point of an evening which will long be remembered.

The speakers' table was one of great distinction, and included President Bernard H. Sokol, and Decalogue members Maxwell Abbell, Morris Alexander, Col. Jacob M. Arvey, Samuel J. Baskin, Jacob M. Fishman, Judge Harry M. Fisher, Judge A. L. Marovitz, Judge Julius H. Miner, and Representative Sidney Yates. Throughout the audience were many of the past Presidents and other members of our Society, who had purchased or sold many thousands of dollars of Israeli Bonds.

The event of November 12 was preceded by a luncheon given in Judge Burman's honor by The Decalogue Society on October 28 at the Covenant Club. The principal speaker at this meeting was Bartley C. Crum, a recipient of the Decalogue Award of Merit for the year 1946, for his services towards the creation of the State of Israel. Mr. Crum, an Irish-American of eloquence and humor, spoke feelingly of his experiences in the course of many trips to Israel. Other speakers at this luncheon were: President Bernard H. Sokol, Judge Harry M. Fisher, Mr. Morris DeWoskin, and Judge A. L. Marovitz, who acted as executive vice chairman for the event.

Decalogue Research Project

Last year the Orientation of Younger Members Committee reported that Professor Hughes, Chairman of the Department of Sociology at the University of Chicago, and Professor Zeisel of the University of Chicago Law School, had agreed to supervise a sociological investigation of the experiences of young lawyers establishing themselves in practice. The research has been undertaken by Mr. Dan C. Lortie, who is now a research associate (Assistant Professor) at the University of Chicago. His proposal for research has been accepted by the committee at the University and most of the interviews have been completed. The data so far indicates that this study will not only increase the lawyer's understanding of himself and his practice, but will also point to some conclusions of a rather startling nature.

At this point, Decalogue members can be of material assistance. As in every survey of this type, a certain number of persons listed for interviews cannot be located. If some of these persons can be found, or if it can be established that some of them are no longer in Chicago, the accuracy of the sample will be improved, and the margin of error in the conclusions thereby reduced. These are the names of the people we are trying to locate:

DIAMOND, William	KUPRIS, Anthony C.
JOHNSON, Arthur B.	MITCHELL, David A.
KLORMANN, K. O.	O'ROURKE, Edward M.
STODD, Walter L.	RAUSCH, Eldred A.

KULCZYNSKI, Alexander E.

If any of you can furnish any information regarding the whereabouts of these persons, please call the Chairman of the Committee at FInancial 6-3535.

BERNARD WEISSBOURD, *Chairman*
Orientation of Younger Members Committee

Notes on the Refugee Relief Act of 1953

By WILLIAM GREENHOUSE

Member William Greenhouse is a graduate of Yale '28 and Michigan Law '33. After general practice in Milwaukee, he was appointed Chief Trial Attorney of the Office of Rent Stabilization in Chicago. Since then he has specialized in the practice of Immigration Law.

Myriads of victims of Communistic expansion following World War II found themselves in desperate straits. They had one common fear—that of Communistic persecution. Utterly destitute, they broke through the Iron Curtain, at considerable personal hazard, and escaped into the freer countries of the world. There they had achieved only a temporary refuge. Stateless, friendless, they were uprooted from their homeland, They usually arrived into other lands with little or no assets, and without visas, passports or proper documentation. This added to the problem of population pressures in friendly countries. As a contribution to better cooperation among free nations, and as a humanitarian measure in the traditional American concern for the oppressed, we have opened our doors to the persecuted by the passage of the Refugee Relief Act of 1953. This permitted those accepted, to find an asylum and become permanent residents in this land of the free.

The Refugee Relief Act of 1953 [1], as amended,[2] is emergency legislation which permits the entry into the United States of 205,000 refugees, escapees and expellees. These 205,000 visas are not charged against the regular immigration quotas but are in addition. By definition, a refugee is one who, because of persecution, fear of persecution, natural calamity, or military operations, is out of his usual place of abode, is unable to return thereto, and is not firmly resettled in his present residence.

The number of 205,000 non-quota visas are allocated numerically among European and Asiatic countries. Additional thereto, the Act authorizes the entry of 4,000 orphans, and until June 30, 1955, it allowed adjustment of status for 5,000 aliens, presently in the United States as bona fide non-immigrants. Spouses, together with unmarried sons and daughters under twenty-one years of age, if accompanying or following the alien are automatically admitted on one petition. No visa under the Act may be issued after December 31, 1956.

To be eligible for admissibility, each alien must qualify generally under the provisions of the basic Immigration and Nationality Act.

Assurances, the first step in securing the admission of a refugee, may be submitted by individuals or by a voluntary social agency recognized by the Administrator. The State Department relies heavily on the voluntary agency endorsement. Much less time is required in processing the assurance if so endorsed. An assurance submitted without the endorsement of a recognized agency is subject to careful verification and investigation of the individual executing it, covering such items as his personal financial condition, employment, housing, etc.

The further advantage of an agency endorsement is that there is no further investigative requirements of job assurance and proper housing accommodations. The simple statement by the agency that it has checked the employment and housing requirements is enough to satisfy the State Department. This obviates the necessity of a preliminary investigation by the United States Employment Service and local housing authority.

Before eligibility can be established, the following conditions must be met:

(1) An American citizen must sponsor the proposed immigrant and assure:
   (a) That he will be suitably employed and not displace some other presently employed person;
   (b) That adequate housing is available without displacing some other person; and
   (c) That he will not become a public charge.
(2) Investigation of alien's history, eligibility under the Immigration and Nationality Act, proper documentation, character, and security and medical clearance.

[1] Act of September 7, 1953, Public Law 203, 83d Congress, 67 Stat. 400

[2] Act of August 31, 1954, Public Law 751, 83d Congress, 68 Stat. 1044

(3) Alien may not be firmly resettled in his new home. (The statutory term "firmly resettled" is flexible in meaning and generally means not permanently re-established. A three or four year residence has been accepted as non-permanent.)

(4) Absence of Communistic ties or activity, and no advocacy or assistance to persecutors of any person because of race, religion, or national origin.

(5) A re-entry permit must be obtained from the country of alien's last residence (to be used in the event alien is later deported for statutory grounds of fraud or material misrepresentation).[3]

Provision is made for preference consideration to (a) persons whose skills or services are needed by the United States, and (2) certain relatives (e.g., parents, minor children, including step-children adopted prior to July 1, 1953) of aliens lawfully admitted for permanent residence, and siblings and children of United States citizens. This permits some aliens presently on the waiting lists to be classified as refugees and be admitted immediately under this Act.

The Act authorizes the Secretary of the Treasury to loan money to any of the accredited voluntary agencies to be used to provide transportation within the continental United States. The Intergovernmental Committee on European Migration furnishes ocean transportation for needy refugees. Persons visaed under the Act are exempted from paying its usual fee.

Although the numerical status of the visas available under the program changes from week to week, the quota in many countries is still available for thousands of refugees, and petitions filed now will be processed and receive favorable action.[4]

In the Presidential Message of May 27, 1955, legislative amendments were suggested. The purpose of these suggestions was to liberalize the Act. Congress has not acted on any of the recommendations.

To reduce the time required for processing applications, a letter to the appropriate consul, stating that an assurance will be filed by an accredited voluntary agency with the State Department for a designated refugee, will immediately result in the commencement of the processing and investigative procedure.

Final decision as to eligibility under this Act rests with the Consular Officer. His decisions as to troublesome definitive requirements of statutory eligibility by refugees are final and not reviewable.

Aged, unskilled, decrepit, infirm and ill refugees are inadmissible for failure to pass medical requirements and for other statutory reasons.

In those countries which have had speedy and dramatic economic recovery, e.g., Germany and the Netherlands, we have seen a diminution of applications under the Refugee Act, since these potential refugees have better opportunities and improved economic security.

Certain countries, such as Greece and Italy, are quickly subscribing for their quotas, and perhaps are filled by this time. Hong Kong, representing the greatest single source of refugees in the Far East, is rapidly completing its allotment.

The Administration appears anxious to fulfil its assignment to issue 205,000 visas, but the number of assurances has been insufficient, and greater participation by potential sponsors is necessary if the goal is to be met. It is urged that all assurances for applicants be filed before Aug. 30, 1956. Altho the Act expires Dec. 31, 1956, *at least* 4 months are necessary for complete processing of the application.

Relaxation of certain rigid requirements has been attempted from time to time by the Administration, in order to expedite the program, through the revision of regulations and operating instructions. Some of these changes refer to a relaxed and more liberal definition of terms "firmly resettled", "usual place of abode", and "nationals", in addition to more liberal requirements of housing, prerequisite and mandatory two-year investigation and history requirement for each applicant.

The Act gives orphans, on a world-wide basis, a favored treatment, and is designed to accelerate their admissibility. By liberal definition, an

[3] Practically all of the major countries have executed agreements with the United States undertaking to issue readmission certificates. In Europe, Sweden has refused to enter into an agreement; the one with Portugal is pending. In the Far East, Thailand, Borneo, Malaya, and New Caledonia have refused to sign. A few countries, such as Cuba, that do not contain enough refugees to warrant an agreement, consider applications on an ad hoc basis.

[4] As of November 11, 1955, 63,332 visas had been issued, leaving 150,668 still available.

eligible orphan means anyone under ten years of age who has a loss of one or both parents, and has been or will be adopted either abroad or in the United States by a United States citizen. A child born out of wedlock is not excluded solely for that reason.

The Act is being administered by six federal agencies, the Department of State, the Immigration and Naturalization Service, the United States Public Health Service, the Department of Labor, the Counter-Intelligence Corps of the Army and the Treasury Department. The ultimate decision as to choice of immigrants is the prerogative solely of the United States Government officials.

There are 26 agencies authorized to endorse sponsors' assurances. Two of these agencies, namely, the Chinese-American Civic Council, and the American Committee for Resettlement of Polish D. P.'s, are located in Chicago. They completely process these documents in Chicago and send them directly to the Department of State. The other principal agencies, all with headquarters in New York, such as HIAS, clear their applications through New York.

Applications are considered on a priority basis, as of

(1) The date registered on quota waiting list under the Immigration & Naturalization Act;

(2) The date applicant applied under the Refugee Relief Act; or

(3) The date assurance was filed; whichever date is earlier.

The requisite steps in processing applications are as follows:

1. Filing Petition with the State Department
2. Processing by State Department and sending to appropriate Consular Office.
3. Preliminary interview of refugee at Consular Office
4. Preliminary medical screening.
5. Investigation by Consular Staff
6. Final medical examination
7. Joint review and concurrence by Immigration & Naturalization Service and Consul.
8. Re-entry permit, permitting re-entry, to the country of his origin, in the event alien is subsequently deported.
9. Issuance of Visa.

The program has many facets and varies from country to country. For greater particularity, specific reference should be made to the Act itself and the Regulations implementing it. The Regulations are divided into two major parts in the Code of Federal Regulations, one under Title 8 and the other in Title 22 (Part 44).

* * *

This article has attempted to give a general over-view of the Refugee Relief Act, its provisions, accomplishments, status and potential. May I leave one question with you. The Refugee Act provides that 5,000 aliens presently in the United States on a temporary basis may adjust to a permanent status. The procedure requires a Hearing before a designated Officer of the Immigration and Naturalization Service, and if that Officer recommends favorable action on the petition to adjust, a report must be sent to the Congress of same, for concurrence by that body. Approximately 10,000 petitions have been favorably acted upon by the Service. What technique should Congress use in determining which 5,000 petitions should be approved?

Applications for Membership

MARVIN M. VICTOR, *Chairman Membership Committee*

APPLICANTS	*SPONSORS*
Arthur Brody	Benjamin Weintroub and Jacob Van Emden
B. M. Feldman	Benjamin Weintroub and Reginald J. Holzer
Bernard Fisher	Benjamin Weintroub and Morris G. Meyers
Milton R. Gassel	H. B. Schatz
Sidney Z. Karasik	Benjamin Weintroub and Elmer Gertz
Harold Lipschultz	H. Burton Schatz and M. Richard Lipschultz
Gerald Morton Minkus	Alec E. Weinrob
Eugene Pekow	Benjamin Weintroub and Leonard Server
Isadore L. Schurman	Benjamin Weintroub and Judge H. G. Hershenson
Ellis Shaffer	Benjamin Weintroub and Lewis Shaffer
Morris L. Simons	Benjamin Weintroub and Favil David Berns
W. B. Steinberg	Benjamin Weintroub
David A. Weiner	Benjamin Weintroub and John M. Weiner
C. Robert Yellin	Benjamin Weintroub and Philip H. Mitchel

BOOK REVIEWS

Nine Men. A Political History of the Supreme Court from 1790 to 1955. By Fred Rodell. Random House. 338 pp. $5.00.

Reviewed by DAVID F. SILVERZWEIG

When as a schoolboy I was reading the Parson Weems version of United States history, I was at once both relieved and gratified that all our presidents were great and good men. It was a kindly providence, I thought, that had brought nothing but capable and high-minded men to the White House.

While our history books do not, of course, devote as much space to the Supreme Court as to the presidency, such pages as dealt with our highest judicial tribunal spoke with uniform appreciation of the men who sat in their marble hall united in a singleness of purpose—to dispense equal justice under the law.

Now comes this book and disrobes, as it were, the men who were and are the Supreme Court. The author's thesis is simple: Justices are men and men are human; as human beings, they are guided and motivated by human bias and their own social, economic and political predilections; their decisions in important cases are based, for the most part, on political rather than juridical grounds. In short, contrary to popular conception, ours is a government of men—not laws.

The author, a law professor at Yale University, develops his case by reviewing some of the notable decisions in American constitutional history and examining the lives of the men who made these decisions in the light of the political climate of the times. Special attention is given to John Marshall, Roger B. Taney, and Oliver Wendell Holmes, the latter the author's hero.

Politics and economics rather than constitutional law, argues the author, dictate important legal decisions. So it was in the days of the "Great Chief Justice," John Marshall, and so it is today. Marshall's achievements, he says, were by-products of his constant concern for private property. *Marbury* v. *Madison,* says the author, "like every significant Supreme Court decision since, were and are rooted in politics, not in law. This only the ignorant would deny and only the naive deplore."

"Court-packing," obviously a political rather judicial maneuver, did not originate with the administration of Franklin D. Roosevelt. The size of the Court had been varied several times previously and three times since the Civil War—both increased and reduced—and always for strictly political purposes. The author, a militant disciple of the New Deal, calls FDR's proposal a "court-unpacking" plan, loaded as it was with the immovable "Four Horsemen" (Van Devanter, Sutherland, Butler and McReynolds) of the early days of the New Deal.

Of particular current interest is the author's delineation of the "New Deal" court and the "Truman Court." Most of FDR's appointees fare well. The treatment accorded Truman's selections for the high court, Vinson, Burton, Clark and Minton, is nothing short of brutal. Profiles of the individual justices are drawn with a steady, and often unadmiring, hand. The awe and reverence with which most Americans regard the Supreme Court, says the author, is bred of pure ignorance.

Lawyers will be interested in Professor Rodell's observation that history has proven that prior judicial experience is not important in a Supreme Court justice. Of greater value, he says, are the man's social, economic, and political views.

A forthright liberal, the author pulls no punches in developing his theme. His writing is direct, though somewhat marred by a style which is occasionally annoying. His description of the landmark decisions in American judicial history and the forces—economic, political, class—which dictated them, lends a new dimension to our understanding of the Supreme Court and its role in American history.

Israel's Emerging Constitution 1948-1951, by Emanuel Rackman. Columbia University Press, 196 pp. $3.00.

Reviewed by LOUIS A. SHERMAN

Member Louis A. Sherman is a veteran Zionist and an active Histadrut worker. He has recently returned from a prolonged visit to Israel.

While the author's immediate theme is Israel's emerging Constitution the scope of the volume is considerably wider; Mr. Rackman also attempts to assess the problems of the State of Israel, and the functions of the government from the days of its foundation. His book is profuse with quotations from leaders of various political parties and the recorded achievements of the new nation. His report of the debates and arguments bearing on the making of the new Constitution is exceptionally informative. He presents three or four different plans of a Constitution, which though proposed and discussed in committee, were not adopted.

In the light of the fact that Israel has had, since its foundation, anywhere from twelve to seventeen political parties, each jealous of the other, Israel today is still without a written Constitution.

The principal premise treated in this book is the relationship between Church and the State.

This is one of the major problems that is affecting Israel today and will to an even greater degree, I believe, concern it in the future.

The question of Civil Liberties is discussed with the recognition of a situation that after the War for Independence great powers had to be assumed by the executive branch of the government. The chronic state of hostilities between Israel and the Arab powers on its borders had to be taken into account.

The makers of the Constitution are placing great stress upon the personal status laws; the author admonishes liberals and others who do not agree with the principle that the church law should be bound with and become the law of the land. He bases his findings primarily on the body of laws that existed prior to the establishment of the State, under the Turkish rule, when the country was governed by the Rabbinate, on the questions of marriage, divorce, inheritance and allied matters, which had also been recognized by the British under the Mandate.

Mr. Rackman points out that the United Nations' General Assembly resolution requires that a Constitution of Israel must respect the law of family and personal status; that the personal status laws have also been accorded and preserved for Moslems and Christians. He notes that it would be an incredible act of schizo-phrenic discrimination against the irreligious Christians, Moslems and against the Orthodox Jews if such rights were abolished.

It is difficult for an American to conceive that a precept of the division of the Church and the State, as provided for under the United States Constitution and the Constitutional guaranties, as well as the division of authority between executive, legislative and judicial branches of government and their limitation of power, had not been adopted in Israel; this, the author contends, is because the Israelis have not been accustomed to and have not lived under such a Constitution. The majority of Israeli citizens came from Western Europe, while a number immigrated from Arab countries and North Africa. The concept of democracy of the majority of Israelis is based upon free elections; representation to the Knesset is based upon proportionate number of votes received nation wide, and not on the individual choice of a candidate and geographical subdivision.

There has emerged, however, an unwritten constitution in Israel; its principal weakness lies in the fact that there prevails the personal status law which is administered by the Rabbinate, and also in the fact the Executive Branch of the Government has assumed greater and greater powers. The first Knesset pronounced freedom of speech and assembly conditioned on due regard for the security of the State, its freedom and independence, as well as, respect for private rights.

The Israeli Constitution, though unwritten, has the defects expected in any new basic document; these defects, it is believed, time will eliminate and correct. The molders of the Israeli basic law have not as yet cut themselves from the ties of the past, but they have gone far beyond the processes of political democracy by adopting the proportional representation and party system. Under the party system, each presents a slate and receives representation both in the legislative and executive branch of the government in proportion to the votes cast for that party. The parties, however, designated the individuals who are to sit as members of the Knesset and of the executive branch of the government, when invited to join the executive branch, in proportion to the votes cast for such party.

It would have been much better had the first Knesset been organized as a constituent assembly for the purpose of promulgating a constitutional form of government and thus cut the ties with the past and establish a democracy similar to the United States with basic guarantees as to civil liberties and with a severance of the tie between Church and State. But, that must be learned by the Israelis through the experience of coming years.

The Israelis are not fearful of their loss of civil liberties; they will pattern their basic laws as the needs and experience of their Republic will demand—under the impact of conditions—just as the basic law in the United States has been changed by the amendments to the Constitution since its adoption.

The Fifth Amendment Today, by Erwin N. Griswold. Harvard University Press. 82 pp. 50 cents, paper bound.

Reviewed by LEONARD L. LEON

In the early 20's Benjamin C. Bachrach testified before the Senate Judiciary Committee investigating the infamous anti-alien "Palmer Raids" of 1919-20. Queried as to his political philosophy, the Chicago attorney who had acquitted himself with distinction in some twenty five years before the Illinois bar replied, "I should describe myself as a conservative, and conservative to the extent that I want all the sections of the Constitution enforced all the time." Harvard Law School Dean Griswold's approach to the Fifth Amendment controversy is essentially the same. The persuasive arguments he presents "are conservative arguments, following naturally from the principles on which this country was founded." Not intended as a scholarly treatise, the 82 page paper bound edition is a compilation of three separate

speeches made by Dean Griswold in 1954. Two of the speeches concern themselves with the self-incrimination clause of the Fifth Amendment. The third discusses the due process provision.

The author does not long leave the reader in doubt as to his position. He "ventures the suggestion that the privilege against self-incrimination is one of the great landmarks in man's struggle to make himself civilized." Starting with a brief history of its origin, Dean Griswold goes on to analyze at some length the widely held belief that an inference of guilt is justified if there is reliance on the privilege. Using the device of hypothetical examples, he demonstrates that there are numerous situations in which an innocent individual rightfully may invoke the Fifth Amendment. While recognizing that not everyone who invokes the privilege is innocent of wrong doing, he emphasizes that an inference of guilt cannot automatically follow.

Pervading Dean Griswold's book is his awareness of the value of the privilege as a symbol of a free society—a bulwark protecting the individual against the arbitrary use of the organized power of the State. Acknowledging the arguments of the advocates of absolute security, he replies with the truism that we cannot attain an illusory security by adopting the totalitarian methods of our adversaries.

The abuses of due process indulged in by some legislative investigating committees, also are subject to Dean Griswold's searching scrutiny. He fails to find cogent reasons for not surrounding legislative investigations with the procedural safeguards developed over the centuries by the courts for the protection of our basic liberties. As a partial solution to the problem Dean Griswold proposes a Code of Practice for legislative investigation which parallels in many respects the proposed Congressional Code formulated by the Decalogue Society's Civic Affairs Committee.

This book can be read with immense profit by both lawyer and layman. Implicit in it is a deep-rooted belief in the value of our democratic institutions, a recognition that they were not obtained easily, and a determination that we shall not lose them.

HIGH SCORE FOR JUDGE LEFKOVITS

Member Judge David Lefkovits, received a high rating from the Chicago Bar Association in its recently announced examination of the qualifications of sitting judges of the Municipal Court whose terms expire next year. Serving his first term, Judge Lefkovits' rating was only approximately one percentage point below the judge ranked highest in the Chicago Bar poll.

Lawyer's LIBRARY

NEW BOOKS

American Bar Foundation. *The administration of criminal justice in the United States; plan for a survey to be conducted under the auspices of American Bar Foundation.* Prepared by A. H. Sherry & J. A. Pettis, Jr. Chicago, American Bar Foundation, 1955. 197 p. $2.00.

Cahn, E. N. *The moral decision; right and wrong in the light of American Law.* Bloomington, Indiana Univ. Press, 1955. 342 p. $5.00.

Chapman, Guy. *The Dreyfus case, a reassessment.* Toronto, Clarke, Irwin, 1955. 400 p. $5.25.

Cohen, A. K. *Delinquent boys: the future of the gang.* Glencoe, Ill., Free Press, 1955. 202 p. $3.50.

Curtis, C. P. *The Oppenheimer case; The trial of a security system.* N. Y., Simon and Schuster, 1955. 281 p. $4.00.

Deutsch, Albert. *The trouble with cops; study of police departments, procedures and corruption.* N. Y., Crown Publishers, 1955. 233 p.

Hofstadter, Richard and Metzger, W. P. *The development of academic freedom in the United States.* N. Y., Columbia Univ. Press, 1955. 527 p. $5.50.

Illinois law and practice. Vols. 12-15. Chicago, Burdette Smith, 1955.

Ludwig, F. J. *Youth and the law.* Brooklyn, Foundation Press, 1955. $5.50.

MacIver, R. M. *Academic freedom in our time.* N. Y., Columbia Univ. Press, 1955. 329 p. $4.00.

Ploscowe, Morris. *Truth about divorce.* N. Y., Hawthorn Books, 1955. 315 p. $4.95.

Rowe, C. W. *How and where lawyers get practice:* 780 *lawyers' answers to the question: "How and where do lawyers get practice?"*—containing the results of exhaustive discussions and conferences . . . Durham, N. C., Judiciary Pub. Co., 1955. 212 p. $5.00.

Schwartz, Bernard. *American constitutional law.* N. Y., Cambridge Univ. Press, 1955. 364 p. $5.00.

Slocomb, W. H. *The Communist Constitution vs. the United States Constitution.* Boston, Meador, 1955. 431 p. $3.00.

Sullivan, R. E. *Handbook of oil and gas law.* N. Y., Prentice-Hall, 1955. 556 p. $8.50.

ISADORE KAPLAN

Member Isadore Kaplan will be the guest of honor at a testimonial dinner on Sunday evening, March 11th, 1956, at the Sherman Hotel. The occasion will be the culmination of a drive for funds to erect a Community Youth Center on Foster and Drake Avenues. The affair will also mark the 44th Anniversary of the Adas B'nai Israel, of which Isadore Kaplan is one of the founders.

A Life Sentence

By HENRY COOLIDGE SEMPLE

The maid is guilty, and well knowing it,
She hangs her head;
With downcast eye and bosom all a-tremble,
Betraying red,
Upon her cheeks the virgin glows assemble.

And now she stands before the court supreme,
To be accused
Of theft—of bold and daring robbery;
With hope infused,
I prosecute the maid relentlessly.

And now the case is argued *pro* and *con*;
In measured tone,
His Honor asks, when no excuse is pled,
"Now, dost thou own
Thy guilt, or plead'st thou innocence instead?"

The winsome pris'ner blushed, "The charge is true,
I stole his heart."
Then speaks Judge Cupid from his seat above,
"I do my part,
I sentence thee for Life behind the bars of Love."

Reprinted from *The Lawyer's Alcove*
Ina Russelle Warren, Editor

HAROLD A. SIEGAN

Member Harold A. Siegan was recently appointed a Master in Chancery of the Superior Court.

John Marshall

(Continued from page 5)

there was dignity in his carriage, benign wisdom in his appearance. He had no side to him, no delusions of grandeur, no affectations of speech, no pomp in any circumstance. He was direct and simple and got to the heart of all matters and men. In a thick forest of rhetoric and legal technicalities, he could be depended upon to go unerringly in the right direction, according to his own inner light. So in the generation that he presided over the Supreme Court of the United States, that tribunal traveled from a hapless infancy to a strong maturity. "He made the Constitution live," said one student of his career, "he imparted to it the breath of immortality, and its vigorous life at the present hour is due mainly to the wise interpretation he gave to its provisions during his long term of office."

The Editor Recommends:

Fifty Major Documents of the Twentieth Century. Louis L. Snyder, Editor. Van Nostrand Company, New York. 185 pp. $1.25.

> These FIFTY MAJOR DOCUMENTS OF THE TWENTIETH CENTURY will prove a unique basis upon which to form your own judgements of recent historical developments have been reproduced in full text to keep the essential thought of a given subject, and brief introductions to each one give the background and state the importance of the selection. . . .

Among the "FIFTY" are: The Balfour Declaration on Palestine, November 2, 1917; The Fourteen Points, January 8, 1918; The Nuremberg Laws on Citizenship and Race, September-November, 1935; Abdication Letter of Edward VIII to the House of Commons, December 10, 1936; Winston Churchill's Three Famous Speeches of 1940—A. "Blood, Toil, Tears and Sweat," May 13, 1940; President Franklin D. Roosevelt's Four Freedoms Speech, January 6, 1941; The Atlantic Charter, August 14, 1941; Hitler's Political Testament, April 29, 1945; The Baruch Proposals for the Control of Atomic Energy, June, 1946; The Truman Doctrine, March 12, 1947; The Marshall Plan, June 5, 1947; The North Atlantic Treaty, April 4, 1949, and Charter of the United Nations.

SALUTE

Harold M. Nudelman, son of Oscar Nudelman past president of The Decalogue Society of Lawyers, was recently appointed assistant corporation counsel of the city of Chicago. Nudelman has been assigned to the appeals division of the counsel's office.

SITUATIONS WANTED

Michael Levin, chairman Decalogue Placement and Employment Committee, urges members seeking professional help to advise him of their needs. The names and addresses of several young, recently admitted lawyers in search of employment, are registered with the Committee. Mr. Levin's telephone number is ANdover 3-3186.

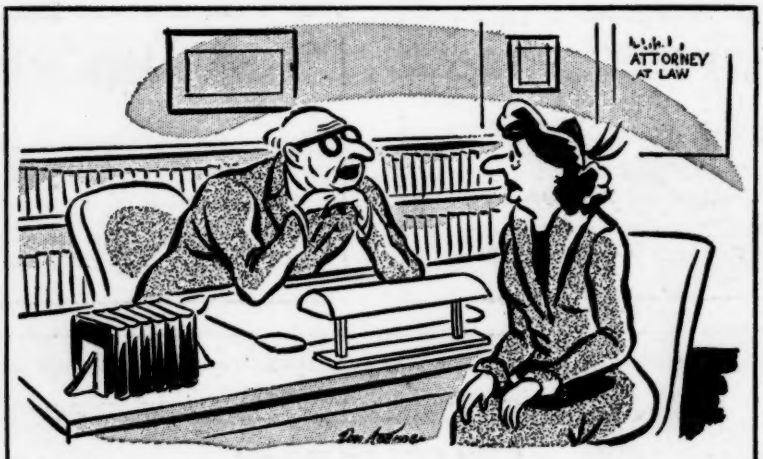
Return Postage Guaranteed

THE DECALOGUE JOURNAL

A Publication of The Decalogue Society of Lawyers

180 WEST WASHINGTON STREET
CHICAGO 2, ILLINOIS

BULK RATE
U. S. Postage
PAID
Permit No. 4708
Chicago, Ill.



"Your husband definitely CAN NOT fire you. You're entitled to a legal divorce and alimony."

Courtesy, *Case* and *Comment*

...THOSE ALONE MAY BE SERVANTS OF THE LAW WHO LABOR WITH LEARNING, COURAGE AND DEVOTION TO PRESERVE LIBERTY AND PROMOTE JUSTICE.

—University of Virginia Law School.